

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
CARSON B. and BESSIE H. HUBBARD }

Appearances:

For Appellants: Carson B. Hubbard, Attorney at Law.

For Respondent: W.M. Walsh, Pssistant Franchise Tax Commis-
sioner; James J. Arditto, Franchise Tax
Counsel.

O P I N I O N

This appeal is made pursuant to Section 19 of the Personal Income Tax Act (Chapter 329, Statutes of 1935, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Carson B. and Bessie H. Hubbard to a proposed assessment of additional tax in the amount of \$21.24 for the taxable year ended December 31, 1936.

Appellants purchased 10 shares of the capital stock of the Walnut Park National Bank of Walnut Park, California, in 1930 at a cost of \$2,240. The Bank was closed in 1933 by the Comptroller of the Currency and in the same year a 100% assessment was levied against the stockholders. Appellants paid \$250 in 1933 in partial satisfaction of the assessment of \$1,000 made against them and made a final settlement of the liability in 1933 through the payment of an additional \$150. The **Commissioner** allowed the deduction in their return of income for 1936 of the \$150, but disallowed the deduction of the \$2,240 and, on the basis of that action, levied his proposed assessment. The deduction of the cost of the stock was disallowed as a loss on the ground that the stock became worthless in 1933 and that the loss was not, accordingly; sustained in 1936.

Appellants contend that the bank stock became worthless shortly after June 30, 1936, when, it is alleged, "all the 'liquidating value' of the stock had disappeared?" and a final settlement of the assessment was made. In support of their position they submit an affidavit of the receiver dated May 23, 1940, to the effect that on June 30, 1936, the total book value of remaining assets and uncollected stock assessments was \$405,349.99, and that the assets remaining on September 28, 1938, with a book value of \$287,869.03, were sold on that day for 43,050. They claim that the stock did not become worthless until 1936 as it then first appeared that the Bank's liabilities exceeded its assets, they being, respectively, \$427,298.61 and \$405,349.99

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as of June 30, 1936.

The Appellants have not, in our opinion, established that the stock possessed any value as late as 1936. In the absence of evidence establishing that fact, the position of the Commissioner that the loss was sustained prior to that year must, of course, be upheld. The only evidence presented by Appellant respecting the value of the stock at any time from 1933 to and including 1936 related to the book value of the assets of the Bank. Such evidence does not, however establish that the stock had any value after the closing of the Bank and the levy of assessments against the stockholders in 1933. In re Hoffman, 16 F. Supp. 391; Smith v. United States, 16 F. Supp. 393. In both of these cases bank stock was held to be worthless in the year in which the bank was closed despite the fact that the book value of the bank's assets exceeded its liabilities. In the Smith case the Court stated in this connection

"I am unable to accept, as sound, the argument of the defendant that the books created a presumption of solvency. I think it is so far a matter of common knowledge that the court may take judicial notice of the fact that the book value in 1932 of securities and discounts of the bank would not reflect the real value of these assets."

Sherrill v. Adkins (U. S. Dist. Ct.) 26 A.F.T.R. 1243, cited by Appellants in support of their position, is readily distinguishable from the matter herein considered. In that case the Court upheld the deduction in 1934 of a loss due to the worthlessness of certain bank stock. Although the State Bank Commissioner had issued a call for the payment of assessments on the stock in 1933, that action was taken under provisions of an Arkansas statute authorizing such a call if the capital of a bank was impaired. The Commissioner took no steps, however, to collect the assessment and continued to operate the bank until October 10, 1934, on which date he determined that the Bank was insolvent, placed it in legal liquidation as an insolvent bank and levied a 100% assessment against the stockholders. As the Court determined that the stock became worthless and that the loss was sustained in 1934, the year in which the Commissioner placed the bank in liquidation and levied an assessment against its stockholders, the decision does not support Appellant's contention that his loss due to the worthlessness of his stock occurred not in 1933, the year in which the Walnut Park National Bank was placed in liquidation and an assessment levied against its stockholders, but in a subsequent year.

In the Hoffman case, the Court stated in the course of its opinion

"To say that stockholders of a bank which has been closed by order of the authorities and ordered liquidated do not sustain a loss upon their stock until some subsequent date when liquidation finally takes place or until the official appraisement of

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"the bank's assets, seems to me to be losing touch with reality. It is just conceivable that cases might arise in which some realization could be had by the stockholders in the long future. As a practical matter, however, the business would never remotely consider that contingency. To all intents and purposes the stock of a bank becomes unsalable at any price when the bank is taken over and liquidation begins."

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Chas. J. **McColgan**, Franchise Tax Commissioner, in overruling the protest of Carson B. and Bessie H. Hubbard to a proposed assessment of additional tax in the amount of \$21.24 for the taxable year ended December 31, 1936, pursuant to Chapter 329, Statutes of 1935, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of October, 1944, by the State Board of Equalization.

Wm. G. Bonelli, Member
Geo. R. Reilly, Member
J. H. Quinn, Member

ATTEST: Dixwell L. Pierce, Secretary